

Before the  
Administrative Hearing Commission  
State of Missouri



DIRECTOR OF DEPARTMENT OF )  
INSURANCE, FINANCIAL INSTITUTIONS )  
AND PROFESSIONAL REGISTRATION, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
VALORE TITLE LLC, )  
 )  
Respondent. )

No. 14-1315 DI

**DECISION**

We grant the motion for summary decision filed by the Director (“the Director”) of the Department of Insurance, Financial Institutions and Professional Registration (“the Department”). The Director has cause to discipline Valore Title, LLC’s business entity insurance producer license under § 375.141.1(2) and (8).<sup>1</sup>

**Procedure**

On August 5, 2014, the Director filed a complaint. Valore Title was served by certified mail on August 29, 2014, but never filed an answer. The Director filed a motion for summary decision on December 24, 2014. We gave Valore Title until January 7, 2015 to file a response, but no pleading was filed on its behalf. On January 2, 2015, the Director filed a supplement to the record, which consists of original signed affidavits of the Department’s Investigative Consultant and the Deputy Chief Clerk of the Texas Department of Insurance. Because both

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<sup>1</sup> Statutory references are to the RSMo Cum. Supp. 2013, unless otherwise indicated.

affidavits were filed and served with the Director's motion, the supplement did not materially alter the record, but we gave Valore Title until January 12, 2015 to file a response to the supplement. To date, Valore Title has filed nothing with this Commission.

Under 1 CSR 15-3.446(6)(A),<sup>2</sup> we may grant summary decision "if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts." Parties must establish the facts by admissible evidence. 1 CSR 15-3.446(6)(B).

#### Admissibility of the Exhibits

With the motion, the Director submitted a licensing records affidavit pertaining to the history of Valore Title's license (Exhibit 1), as well as his Certificate of Service for his First Request for Admissions directed to Valore Title (Exhibit 2). Appended to the Director's request for admissions are several documents Valore Title was asked to admit were true and accurate copies in the Director's request (Exhibits 1 through 7 to the request). The balance of the documents provided in support of the motion are an affidavit and supplemental records of the Department's Investigative Consultant, Kathleen Jolly (Exhibit 3 and 3A through 3G); an affidavit from the Audit Director for Westcor Land Title Insurance Company (Exhibit 4 and 4A); a certified copy of a Consent Order issued by the Texas Commissioner of Insurance (Exhibits 5 and 6); and an affidavit of the Acting Director of the Consumer Affairs Division for the Department (Exhibit 7).

According to his submissions, the Director served his request for admissions by mail on October 31, 2014, and the document informed Valore Title it had thirty days to respond. The Director received no responses.

The Director and this Commission are entitled to rely on the unanswered request for admissions. Under Supreme Court Rule 59.01, the failure to answer a request for admissions conclusively establishes the matters asserted in the request, and no further proof is required.

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<sup>2</sup> References to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

*Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App. W.D. 1985). Such a deemed admission can establish any fact, or “application of the facts to the law, or the truth of the ultimate issue, opinion or conclusion, so long as the opinion called for is not an abstract proposition of law.” *Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App. W.D. 1986). That rule applies to all parties. *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App. W.D. 1983). Our Regulation 1 CSR 15-3.420(1) applies that Rule to this case.

Based on the foregoing evidence and admissions before us, the following findings of fact are undisputed.

### **Findings of Fact**

1. The Director issued a business entity insurance producer license to Valore Title on January 2, 2007. The license was current and active at all relevant times.
2. The business address of Valore Title is in Overland Park, Kansas.
3. In early June, 2011, Donna Allen of Alliant National Title Insurance Company (“Alliant”) alerted the Director that that it was terminating its agency relationship with Valore Title over Alliant’s escrow audit findings and that there were concerns about the integrity of Valore Title’s escrow procedures and related accounting.
4. Attached to the letter from Allen was a summary of Alliant’s audit findings.
5. On June 22, 2011, Special Investigator Larry Leppard, with the Department’s Consumer Affairs Division, sent an inquiry letter to Valore Title seeking information and explanations related to Alliant’s audit findings (which were enclosed with the letter) and asking Valore Title to disclose the identity of its new underwriter (since Alliant was no longer in that role) and to provide a copy of the agency agreement with the new underwriter.
6. The June 22, 2011 inquiry letter to Valore Title stated that a response was due no later than July 13, 2011.

7. This inquiry letter was not returned to Leppard as undeliverable or undelivered, and Valore Title failed to respond to it.

8. On December 10, 2012, a second inquiry letter was mailed by Leppard to Valore Title. This letter indicated that the Department received Valore Title's license renewal application, but that it was still owed a response to the June 22, 2011 inquiry letter and would not process the renewal before receiving such a response.

9. The December 10, 2012 letter requested a response from Valore Title by December 31, 2012.

10. On January 28, 2013, the President of Valore Title, Kris Plumhoff, responded to Leppard's letter of June 22, 2011. Among other things, the letter advised that Westcor Land Title, Inc. ("Westcor") was the new insurance underwriter for the firm and that Valore Title had engaged the services of an outside reconciliation service, Escrow Pros, to assist with its escrow accounting.

11. On January 31, 2013, Leppard sent a follow-up inquiry to Valore Title seeking additional information pertaining to the escrow accounting and reconciliation process and asking it to provide reconciliation documents for the account, contact information for Westcor and Escrow Pros, and a copy of the agency agreement Valore Title claimed to have in place with Westcor.

12. Leppard requested that Valore Title respond by February 21, 2013, but Valore Title did not meet this deadline.

13. Valore Title received the three inquiry letters mailed to it by the Consumer Affairs Division.

14. On March 4, 2013, Plumhoff sent escrow reconciliation documents to Leppard by e-mail attachment. The reconciliation documents were from Escrow Accounting Solutions, Inc.,

and were accompanied by account records from the Bank of Kansas City for the statement period December 1, 2012 to December 31, 2012.

15. The Bank of Kansas City records showed that Valore Title paid the sum of \$653.67 to American Express on December 3, 2012. This payment was unrelated to any title transaction handled by Valore Title or any written escrow instructions related thereto.

16. In June of 2013, Westcor conducted an on-site audit of Valore Title's accounts and determined that Valore Title did not have sufficient money on account to pay title insurance premiums owed to Westcor, all of which should have been held in trust for Westcor.

17. During the audit, Valore Title made a payment of \$1,788.39 to Westcor out of its operating account to pay Westcor's April premium invoice, but invoices for May and June premiums totaling almost \$3,000 could not be paid from funds held by Valore Title because they were insufficient.

18. Westcor ultimately entered into a mutual termination agreement with Valore Title due to deficiencies noted in the audit, and Westcor reported its audit findings to the Department on July 1, 2013.

19. On October 2, 2013, Valore Title entered into a consent order with the Texas Commissioner of Insurance, which became a final administrative action against the company on that date.

20. Valore Title failed to report the final administrative action by the Texas Commissioner of Insurance to the Director within 30 days.

### **Conclusions of Law**

We have jurisdiction. Sections 375.141 and 621.045. The Director bears the burden of proving, by a preponderance of the evidence, that there is cause to impose discipline. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012)(dental licensing

board demonstrates “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Kerwin*, 375 S.W.3d at 230 (quoting *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

Because of its failure to respond to the Director’s request for admissions, Valore Title admitted facts that the Director alleges are cause for discipline.<sup>3</sup> The statutes and case law instruct that we must “separately and independently” determine whether such facts constitute cause for discipline. *Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App. E.D. 1988). Therefore, we independently assess whether the facts, as established by Valore Title’s admissions and other admissible evidence submitted by the Director, allow discipline of its license.

The Director is responsible for the supervision, regulation, and discipline of insurance producers. The Director alleges that there is cause to discipline Valore Title’s license under § 375.141, which states in relevant part:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

\* \* \*

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

\* \* \*

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

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<sup>3</sup> Unlike some of our cases, the request for admissions did not specifically ask Valore to admit there was cause under specific statutes or that it violated certain insurance laws.

6. An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. The report shall include a copy of the order, consent order or other relevant legal documents.

In addition to alleging that Valore Title is subject to discipline for business practices of the kind described in § 375.141.1(8), the Director contends that he has cause to discipline Valore Title under § 375.141.1(2) for violating insurance laws, including § 375.141.6. The Director also relies on the Department's Regulation 20 CSR 100-4.100(2)(A), *Required Response to Inquiries by the Consumer Affairs Division*, which provides in relevant part:

Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction **shall be deemed a violation of this rule**, unless the person can demonstrate that there is reasonable justification for that delay.

(Emphasis added).

The Director also avers that Valore Title violated § 381.022.3(3), an insurance law governing the operation of an escrow agent, which provides, "It is unlawful for any person to use such escrow funds for any purpose other than to fulfill the terms of the individual written escrow instructions after the necessary conditions of the written escrow instructions have been met." The Director also alleges that Valore Title violated § 375.051.1, which requires any insurance producer that collects money on behalf of an insurance company to be held responsible in a trust or fiduciary capacity for those funds.

Count I – Failure to Adequately and Timely Respond to Inquiries

Under § 375.141.1(2), a licensee is subject to discipline for violating an insurance regulation. Under the Department's Regulation 20 CSR 100-4.100(2)(A), every licensee must

respond to an inquiry from the Consumer Affairs Division of the Department within twenty days and must do so adequately. The affidavit of Investigative Consultant Kathleen Jolly and the records produced by the Department, outlining Leppard's<sup>4</sup> efforts to investigate reported irregularities in Valore Title's business practices, prove that Valore Title failed, on more than one occasion, to timely and adequately respond to such inquiries. Valore Title responded to none of the three inquiry letters Leppard sent within the twenty days allowed under the regulation. When Plumhoff finally did respond to two of them, the responses were incomplete and therefore inadequate in that requested documents, such as current title insurance agency agreements, were not provided.

We find cause for discipline of Valore Title's license pursuant to § 375.141.1(2).

#### Count II – Unlawful Use of Escrow Funds

The banking statements and accounting documents Plumhoff provided Leppard from December of 2012 show that Valore Title paid \$653.67 to American Express out of its escrow account. Through its admissions, the company acknowledged that the payment was not made relative to any title-related transaction and that there were no written escrow instructions providing for its remittance, making this payment of escrow funds unlawful under § 381.022.3(3). This payment constitutes a violation of an insurance law, so there is cause for discipline under § 375.141.1(2).

#### Count III – Failure to Hold Funds in a Trust or Fiduciary Capacity

As an agent for Westcor, Valore Title was responsible, pursuant to § 375.051.1, to hold title insurance premiums collected for its underwriter in trust and to not spend or otherwise disburse those funds to anyone other than the insurance company to which they were owed. However, Westcor's June 2013 on-site review revealed that Valore Title had insufficient funds in

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<sup>4</sup> Leppard passed away since his work on the Valore Title investigation.



either its premium or operating accounts to pay all of the premiums it owed Westcor at the time. Pursuant to § 375.051.1, Valore Title was charged with the legal responsibility to handle premiums collected for Westcor policies in a trust or fiduciary capacity. Having insufficient funds to pay its legal obligations to the underwriter demonstrates that Valore Title failed in its trusteeship of the funds collected for premiums. This is a violation of § 375.051.1, an insurance law of this state, and is therefore cause for discipline pursuant to § 375.141.1(2).

#### Count IV – Failure to Report Administrative Action

A final administrative action against Valore Title by the Texas Commissioner of Insurance was entered on October 3, 2013. It was never reported to the Director, even though it was required to be reported within thirty days. In failing to report the Texas administrative action to the Director within thirty days of it becoming final, Valore Title violated its legal duty under § 375.141.6, establishing further grounds for discipline under § 375.141.1(2).

#### Count V – Demonstrating Incompetence,

#### Untrustworthiness, or Financial Irresponsibility

The Director argues there is cause to discipline Valore Title's license under § 375.141.1(8) because it demonstrated incompetence in the conduct of business when its escrow account audits and Consumer Affairs Division examinations evidenced irregularities. "Incompetent, if used in a statute relating to actual occupational ability, means "the actual ability of a person to perform in that occupation." Section 1.020(9). Missouri cases have also defined incompetency, in the professional licensing context, as a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation. *Tendai v. Missouri State Bd. of Reg'n for the Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005). Incompetency is a "state of being" showing that a professional is unable or is unwilling to function properly in the profession. *Albanna v. State Bd. of Regis'n for the Healing Art*, 293 S.W.3d 423, 436 (Mo. banc

2009). We find that the Director has carried his burden to show sufficient inability or unwillingness by Valore Title to capably manage its accounting and fiduciary responsibilities, thereby proving its incompetence.

“Untrustworthy” is defined as “not trustworthy” and “trustworthy” is defined as “worthy of confidence.” WEBSTER’S THIRD NEWS INT’L DICTIONARY 2457, 2514 (1986). We recognize that making an unauthorized payment to American Express from an escrow account was financially irresponsible, as was failing to hold premiums in trust for the underwriting agency to a title transaction. Valore Title’s clients and stakeholders in real estate title transactions had a right to rely on proper handling of escrow funds collected, and using any portion of those funds to pay an American Express bill unrelated to specific written escrow instructions was inconsistent with the trustworthiness required of Valore Title. Additionally, the apparent shortfall in money on account, which rendered Valore Title unable to meet its fiduciary obligation to hold and remit insurance premiums to Westcor, is another example of incompetence, untrustworthiness and financial irresponsibility in the conduct of its business.

There is cause for discipline under § 375.141.1(8).

### **Summary**

The Director has cause to discipline Valore Title, LLC’s license under § 375.141.1(2) and (8). We cancel the hearing.

SO ORDERED on April 10, 2015.

\s\ Nicole Colbert-Botchway  
NICOLE COLBERT-BOTCHWAY  
Commissioner